

SRF PROJECT CONSTRUCTION CONTRACT ASSURANCES
Post Equivalency

A. Advertising Time - KDHE policy recommends the invitation for bids be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening of bids. Projects should be advertised for bids at least 30 days prior to bid opening. To allow ample time for bidders to comply with minority business enterprise requirements, it is suggested a period longer than 30 days be considered.

B. Reserved

C. Reserved

D. Reserved

E. Reserved

F. Anti-Discrimination - The KDHE SRF Program requires the following clause be contained in the "Information to Bidders" for this project:

"Bidders on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)".

The enclosed "Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination" information sheet (Appendix G-1) and the "State of Kansas Act Against Discrimination Contract Revisions" certification form (Appendix G-2) must be included in the contract documents. The subject form (Appendix G-2) must be executed, a copy retained for your files and a copy submitted to KDHE prior to approval for contract award. This should be included as part of the contractor's bid submittal.

G. Reserved

H. Reserved

I. Minority/Women's (Disadvantaged) Business Enterprise - MBE/WBE (DBE) - The Federal SRF program requires the following documents be included in the specifications: the KPWSLF Disadvantaged Business Enterprise Information Sheet (Appendix E-1), Section 31.36(e) of the March 11, 1988 EPA Procurement Regulations (Appendix E-2), Procedures for Implementing of MBE/WBE (Appendix E-3), and Minority and Women's Disadvantaged Business Enterprise Utilization Worksheet (Appendix E-4). All bidders must be required to submit a completed worksheet as part of their proposals.

J. Reserved

K. Bid Bond - KDHE recommends if the contract price is expected to exceed \$100,000, each bidder furnish a bid guarantee equivalent to 5 per cent of the bid. Contracts less than \$100,000 are subject to State and local requirements relating to bid guarantee.

L. Award of Contract - KDHE Policy requires the proposal fully explain the basis for determining the low bidder and include a statement that the contract will be awarded to the lowest responsive, responsible bidder.

M. Reserved

N. Completion Time - KDHE Policy suggests the specifications contain a provision for the maximum calendar or work days allowed for completion of the project.

O. Right of Entry - The Federal SRF program requires that right of entry to the project site be provided for representatives of the Kansas Department of Health and Environment, so they may have access to the work wherever it is in preparation or progress. A paragraph approximately as follows must be included in the specifications:

The successful bidder shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

P.Q. One Hundred Percent Performance and Payment Bonds - KDHE Policy suggests separate performance and payment bonds, each in the amount of 100 percent of the contract price, be required on construction contracts of \$100,000 or more. Use of the loan recipient's own bonding policies and requirements may be utilized but are subject to review and approval by KDHE.

R. Historical and Archeological - The Federal SRF program requires that a paragraph approximately as follows be included in the specifications:

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6th Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

S. Reserved

T. Reserved

U. Reserved

V. Reserved

W. Reserved

X. Innovative/Alternative Performance - The specifications must clearly identify the performance required of the innovative/alternative portions of the project.

Y. Innovative/Alternative Bid Proposal - The bid proposal must include separate bid items for the innovative/alternative portions of the project.

Z. Payment Provisions - The KDHE SRF program demands prompt progress payments be made by the Recipient to contractors. Adequate provisions for such payments must be included in the specifications. Delays in payment to contractors for SRF-funded portions of the project may result in monetary penalty to the Recipient due to the “Rebate” requirements of Federal tax law.

AA. Reserved

BB. Reserved.

CC. Reserved

DD. Reserved

EE. If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent.

FF. Reserved

GG. Reserved

HH. State and Local Laws, Ordinances, and Restrictions - The contract documents and specifications must be in compliance with all State and Local laws, ordinances, and restrictions.

II. NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities - The owner or successful bidder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at www.kdhe.state.ks.us/stormwater.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
DIVISION OF ENVIRONMENT
BUREAU OF WATER

KANSAS PUBLIC WATER SUPPLY LOAN FUND
 DISADVANTAGED BUSINESS ENTERPRISE
 INFORMATION SHEET

The administrative provisions of the Federal Fiscal Year 1991 Appropriations Act require the State Revolving Fund programs make a minimum 8% 'Fair Share' of Federal Funds available to "Disadvantaged Business Enterprise" (DBE) firms. By acceptance of the Federal Fiscal Year 1991 and all subsequent Capitalization Grants, the Kansas Department of Health and Environment (KDHE) must comply with Special Conditions of these awards regarding "Disadvantaged Business Enterprise" Utilization. KDHE agrees to insure to the fullest extent possible that federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organization owned or controlled by socially or economically disadvantaged individuals, women, and historically black colleges and universities. This DBE Utilization requirement will apply to all future capitalization grants, therefore these DBE Utilization requirements will now apply to all Kansas Public Water Supply Loan Fund (KPWSLF) projects. This information sheet explains requirements of the KPWSLF for DEB utilization. A copy of this Information Sheet must be included within engineering contracts for construction services and within the contract documents of construction specifications.

A Disadvantaged Business Enterprise is defined as a business concern owned or controlled by socially disadvantaged and economically disadvantaged individuals. The socially disadvantaged individual must have a minimum of 51 percent ownership, control, and active daily measurement of the business concern to meet this criterion.

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans
 Hispanic Americans
 Native Americans
 Indian Tribes

Asian Pacific Americans
 Native Hawaiian Organizations
 Women
 Historically Black Colleges and Universities

Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the U.S. Small Business Administration (SBA) shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals.

The DBE program is a self-certification program, and so an SBA “determination” is not required, but can be obtained. Any questions regarding the economically disadvantaged aspect of this DBE program can be directed to:

U.S. Small Business Administration
Minority Enterprise Development Division
Wichita District Office Kansas City District Office
316/269-6566 816/374-6815

Several lists of MBE/WBE firms and/or DBE firms are available:

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) and the Kansas Department of Commerce & Housing Minority & Women Owned Business Directory are available by contacting the Bureau of Water Administrative Unit, at 785/296-5534. These listings may also be obtained at the following web sites : **www.ink.org/public/kdot/business/dbe.htm** and **http://kdoch.state.ks.us:80/KDOCHdocs/BD/Minority_and_Women_Owned_Business_Directory.pdf**.

A current listing of small or small disadvantaged business concerns within the four state regional area (Kansas, Missouri, Iowa and Nebraska) is available by contacting either Mr. Marlin Francksen, Supervisor, Government Contracting, Mr. David Turner, Commercial Market Representative or Ms. Christine Sadri, Government Contracting Assistant with the Small Business Administration Office at 816/374-6815. The Small Business Administration Office for the four state area is located at 323 West 8th, Suite 501, Kansas City, Missouri 64105. As previously indicated, an existing company may self-certify as a Disadvantaged Business Enterprise with the SBA. The Small Business Administration encourages the individual municipality, consulting engineer, and/or construction contractor to contact them directly to discuss the individual project and the opportunity for small and small Disadvantaged Business Enterprise firms utilization. The SBA manages the Pronet System (www.SBA.Gov) which provides information by geographical area, trade, profession, and type of ownership. This listing includes only “small” business, as defined by SBA.

Listings of DBE firms are also available from the Minority Business Development Agencies (MBDA) and Centers of the U.S. Department of Commerce. The MBDA manages the PROFILE computer data file, designed to match minority firms with construction, manufacturing, service, and research contract opportunities. Information is available by contacting Mr. David Vega, MBDA Regional Director, 55 E. Monroe Street, Suite 1406, Chicago, Illinois 80603, at 312/353-0182.

Historically Black Colleges and Universities (HBCU) are identified by the Department of Education listing of minority colleges and universities. A copy of this listing is available also by contacting the Bureau of Water Administration Unit, at 785/296-5534.

This information is intended as a resource reference only and not intended to restrict or limit contact with other disadvantaged business.

Engineering firms and construction contractors must report utilization of Disadvantaged Business Enterprises, and must provide documentation of all efforts to obtain and utilize these business concerns on the Minority and Women's Disadvantaged Business Enterprise Utilization Worksheet (Appendix E-4), to the municipality for review and acceptance. The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Affirmative Steps for MBE/WBE DBE Utilization (Appendix E-5), and the MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements, EPA Form 5700-52A (Appendix E-6). The information reported utilizing these forms must be expanded to present the Socially Disadvantaged aspect of the business concern, for example Black American, Women-Owned, HCBU, etc., rather than only MBE or WBE.

The Municipality is required to maintain copies of the Kansas Department of Transportation Directory of Disadvantaged Business Enterprises (DBE), the Kansas Department of Commerce & Housing Minority and Women Owned Business Directory, the Listing of Minority Colleges and Universities, and other sources available at City Hall (and other appropriate locations) for access by consultants, contractors, and suppliers during the bidding and construction phases. Any questions regarding these documents should be directed to the Bureau of Water Administration Unit, at 785/296-5534 .

40 CFR Ch. I

31.36 Procurement.

- (e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps shall include:
- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

Region VII Procurement for Implementation
of 40 CFR Part 31.36(e)
(Minority Business Enterprise/Women's Business Enterprise)*

(The following information must be contained in solicitation documents for construction contracts and engineering agreements pursuant to 40 CFR Part 31.36(e).)

Each bidder/offeror must fully comply with the requirements, terms, conditions of EPA's policy to award a fair share of subagreements to minority and women's businesses. The bidder/offeror commits itself to taking affirmative steps contained herein. Bidders/offerors will take affirmative steps prior to submission of bids/proposals.

Affirmative Steps

1. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation.
2. Assuring that MBEs and WBEs are solicited whenever they are potential sources of goods or services. This step may include:
 - a. Sending letters or making other personal contacts with MBEs and WBEs (e.g. those whose names appear on lists prepared by EPA or the grantee and other MBE/WBEs known to the bidder/offeror). MBEs and WBEs should be contacted when other potential subcontractors are contacted, within reasonable time (fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:
 - i. Specific description of the work to be subcontracted;
 - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
 - iii. Date the quotation is due to the bidder/offeror;
 - iv. Name, address, and phone number of the person in the bidder/offeror's firm whom the prospective MBE/WBE subcontractor should contact for additional information.

- b. Sending letters or making other personal contacts with local, State, federal and private agencies and MBE/WBE associations relevant to the project. Such contacts should provide the same information provided in the direct contacts to MBE and WBE firms.
3. Where feasible, establishing delivery schedules which will encourage participation by MBEs and WBEs.

Determination of Compliance

It is to be noted that bidders/offerors must demonstrate compliance with MBE/WBE requirements in order to be deemed responsible. Demonstration of compliance shall include, but is not limited to, the following information:

1. Names, addresses and phone numbers of MBE/WBEs expected to perform work;
2. Work to be performed by the MBEs and WBEs;
3. Aggregate dollar amount of work to be performed by MBEs and WBEs, showing aggregate to MBEs and aggregate to WBEs separately;
4. Description of contracts to MBE and WBE organizations, agencies and associations which serve MBE/WBEs, including names of organizations, agencies and associations and dates of contacts;
5. Description of contacts to MBEs and WBEs, including number of contacts, fields, (i.e. equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.

All bidders/offerors should complete the Minority and Women's Business Enterprise Utilization Worksheet and submit to the grantee prior to contract award.

(Grantees may establish alternative methods of compliance equivalent to or more stringent than the above.)

KANSAS PUBLIC WATER SUPPLY LOAN FUND
MINORITY AND WOMEN'S DISADVANTAGED BUSINESS ENTERPRISE
UTILIZATION WORKSHEET

Loan Recipient _____
Project No. _____
Contractor/Engineer _____
Address _____
Contact Person: _____ Telephone No. _____
Amount of Contract _____ MBE Percentage _____ WBE Percentage _____

1. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

2. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

3. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

4. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

5. MBE _____ Subcontractor/Supplier _____
WBE _____ Address _____
Contact Person _____ Telephone No. _____
Amount of Subcontract _____
Scope of Work _____

Comments

Prepared by _____ Telephone No. _____
Date _____

CONTRACT PROVISIONS OF KANSAS STATE ANNOTATED
(K.S.A.) 44-1030
KANSAS ACT AGAINST DISCRIMINATION

Except as provided by subsection (c) of this section, every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
 - (b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.
 - (c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)



STATE OF KANSAS
ACT AGAINST DISCRIMINATION
CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

PROJECT/CONTRACT NAME AND NO. _____

MUNICIPALITY _____

KPWSLF NO. _____

CONTRACTOR'S
SIGNATURE _____

TITLE _____

DATE _____